

Understanding Domestic Abuse

In This Chapter...

1.1	Chapter Overview	1
1.2	Defining Domestic Abuse	2
1.3	Causes of Domestic Abuse	4
1.4	Understanding the Abuser — The Potential for Lethality	8
1.5	Abusive Tactics	12
1.6	Living with Abuse	14
1.7	Domestic Abuse and Children	23
1.8	Chart — The Power and Control Wheel.....	29

1.1 Chapter Overview

Domestic violence can impact proceedings in all of Michigan's courts.* It arises in various criminal contexts, ranging in seriousness from misdemeanor property offenses to murder. It can also be an important factor in civil proceedings, most notably in the area of domestic relations. In whatever context it occurs, domestic violence presents the court with unique concerns, the foremost of which is the safety of the litigants and of court personnel. These heightened safety concerns arise from the intimate relationship between the perpetrator and victim of domestic violence. This relationship increases the potential for danger in the following ways:

- F Separation from an abuser does not always end the abuse. Because perpetrators of domestic abuse seek to control their intimate partners, they may resort to (or escalate) physical violence in order to regain control after a separation. Court intervention in abusive behavior may increase the abuser's sense of lost control, and thus the risk of physical violence.
- F Domestic abuse perpetrators typically have unlimited access to their intimate partners. A perpetrator may live with the person being abused, or share parental responsibilities with that person. The perpetrator's knowledge of a partner's daily routine or whereabouts may provide opportunities for harassment, intimidation, and physical violence that would not exist in other relationships.
- F Domestic abuse typically occurs in the privacy of the home, where the only witnesses are under the abuser's control. The National Crime Victimization Survey reported that from 1993–1998, almost two-thirds of intimate partner violence against women and about half of such violence against men occurred in the victim's home.* This circumstance may make it difficult for the court to determine what events have occurred in a case.
- F Persons subjected to domestic abuse respond to it in a variety of ways that are expected for victims of trauma. These responses may appear illogical to outside observers who do not have the information to discern such behavior as an expected response to abuse.

*For a case illustrating this fact, see *People v Newland*, ___ Mich App ___, 2001 WL 717454 (No 212993, March 9, 2001), in which concurrent criminal, PPO, and domestic relations proceedings were pending between the same pair of intimate partners.

*Rennison & Welchans, *Intimate Partner Violence*, p 5 (Bureau of Justice Statistics Special Report, May, 2000).

*The Nat'l Crime Victimization Survey estimates that in 1998, women were victims of intimate partner violence at a rate about five times that of men. *Id.*, p 2.

To respond to the foregoing concerns, this chapter briefly summarizes some of the research findings on the dynamics of domestic violence, in the assumption that an understanding of this subject will help the court to promote the safety of the parties and of court personnel. The discussion assumes a heterosexual relationship with a male abuser unless otherwise indicated. It has been framed in this way because of the disproportionate number of cases in the criminal justice system involving heterosexual relationships in which the male is the abuser.* Moreover, few studies exist about violence in same-sex relationships. However, the reader should be aware that domestic abuse perpetrators can be men or women involved in heterosexual or same-sex intimate relationships, and that Michigan's laws against domestic abuse apply regardless of the parties' gender or sexual orientation. The reader is also cautioned that domestic violence research is a relatively new field of study. Accordingly, the reader should be alert for new information that is likely to appear after the publication date of this benchbook.

1.2 Defining Domestic Abuse

Domestic abuse has been variously defined. It is commonly understood as a pattern of actions carried out over a period of time with the aim of controlling an intimate partner. The Batterer Intervention Standards for the State of Michigan define "domestic violence" as follows:

"Domestic violence is a pattern of controlling behaviors, some of which are criminal, that includes but is not limited to physical assaults, sexual assaults, emotional abuse, isolation, economic coercion, threats, stalking and intimidation. These behaviors are used by the batterer in an effort to control the intimate partner. The behavior may be directed at others with the effect of controlling the intimate partner." Batterer Intervention Standards for the State of Michigan, §4.1 (January 20, 1999).*

*The Batterer Intervention Standards are reproduced at Appendix C. Discussion about them appears at Section 2.3-2.4.

According to this definition, domestic abuse is more than an occasional incident of angry name-calling, or an isolated, one-time slap or shove between a husband and wife who are frustrated with one another. Moreover, domestic abuse is not "out-of-control" behavior. Domestic abuse is one person's effort to control another using a variety of tactics that may involve both criminal and non-criminal acts. Criminal acts may include: hitting, choking, kicking, assaulting with a weapon, shoving, scratching, biting, raping, kidnapping, threatening violence, stalking, destroying property, and harming pets. Non-criminal acts may include: making degrading comments, interrogating children or other family members, threatening or attempting to commit suicide, controlling access to money, and monitoring an intimate partner's time and activities. These actions may be directed at persons other than the intimate partner (e.g., at children or associates) for the purpose of controlling the partner.

MCL 400.1501(d); MSA 16.611(1)(d), which is contained in the act creating the Michigan Domestic Violence Prevention and Treatment Board, defines "domestic violence" for purposes of that act as follows:

“(d) ‘Domestic violence’ means the occurrence of any of the following acts by a person that is not an act of self-defense:

“(i) Causing or attempting to cause physical or mental harm to a family or household member.

“(ii) Placing a family or household member in fear of physical or mental harm.

“(iii) causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.

“(iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested.”

MCL 400.1501(e); MSA 16.611(1)(e) defines “family or household member” to include any of the following:

“(i) A spouse or former spouse.

“(ii) An individual with whom the person resides or has resided.

“(iii) An individual with whom the person has or has had a dating relationship.

“(iv) An individual with whom the person is or has engaged in a sexual relationship.

“(v) An individual to whom the person is related or was formerly related by marriage.

“(vi) An individual with whom the person has a child in common.

“(vii) The minor child of an individual described in subparagraphs (i) to (vi).”

“Dating relationship” means “frequent, intimate associations primarily characterized by the expectation of affectional involvement. Dating relationship does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.” MCL 400.1501(b); MSA 16.611(1)(b).

In this benchbook, the terms “domestic abuse” and “domestic violence” will be used interchangeably.

Note: In using this benchbook, the reader should understand that Michigan statutes contain different definitions of domestic abuse that apply in particular contexts. These definitions have been cited where applicable and should be consulted in appropriate cases. In addition to MCL 400.1501(d); MSA 16.611(1)(d), cited above, the following statutes should be consulted:

- MCL 600.2950; MSA 27A.2950, regarding domestic relationship personal protection orders. See Section 6.3(A) for more information.
- MCL 750.81, 750.81a; MSA 28.276, 28.276(1), regarding criminal domestic assault. See Sections 3.2-3.3 for more information.

1.3 Causes of Domestic Abuse

Many researchers have suggested that domestic abuse is influenced by a combination of social and individual factors. Most characterize it as a pattern of behavior that is learned and chosen by the abuser, and encouraged or discouraged by the abuser's social environment. This section explores the role that various social factors play in the abuser's choice to use violence.

A. The Environment of Violence

This discussion addresses three circumstances noted in the research that are generally present in an environment where domestic violence is occurring.

Note: This discussion is taken from the following resources: Ganley, *Domestic Violence: The What, Why and Who, as Relevant to Civil Court Cases*, Appendix C, p 9–14, in Lemon, *Domestic Violence and Children: Resolving Custody and Visitation Disputes* (Family Violence Prevention Fund, 1995); Merrill, *Ruling the Exceptions: Same-Sex Battering and Domestic Violence Theory*, p 14–17, in *Violence in Gay and Lesbian Domestic Partnerships* (Renzetti and Miley, ed, Harrington Park Press, 1996); and, Farley, *A Survey of Factors Contributing to Gay and Lesbian Domestic Violence*, p 36–41, in *Violence in Gay and Lesbian Domestic Partnerships*, *supra*.

1. The Perpetrator Has Learned to Abuse

Domestic violence perpetrators have learned that violence is an effective, legitimate means of controlling their partners. Some perpetrators have been abused as children by their parents. Others may have learned to abuse by observing violent behavior in others or by behaving violently on a trial-and-error basis, and discovering that violence is tolerated, or even rewarded. Violent behavior is tolerated in various private and public settings. Familial and societal attitudes that devalue women can contribute to an environment that teaches abuse. The criminal justice system also teaches that abuse is acceptable when it fails to impose appropriate sanctions on violent behavior.

Courts can create an environment that tolerates domestic violence when they:

- F Fail to identify cases where domestic violence is present.
- F Fail to address safety concerns in cases where domestic violence is identified.
- F Fail to impose consequences for violations of court orders.
- F Blame the abused party for the abuse rather than holding the abuser accountable for it.
- F Issue orders that conflict with orders issued by courts in other proceedings.
- F Issue mutual protection orders.
- F Issue orders that reward abusive behavior.

- F Require mediation without regard to the imbalances of power and safety concerns that arise when domestic violence is present.
- F Issue vague custody or parenting time orders that can be easily manipulated, or that allow the abuser to exercise control over a former partner and the parties' children.
- F Require the parties to cooperate in carrying out their parental responsibilities without regard to the imbalances of power and safety concerns that arise when domestic violence is present.

2. The Perpetrator Has Found the Opportunity to Abuse

Although violent behavior can be learned from violent family members, most children who witness violent behavior do not become abusive adults. Likewise, the vast majority of men who are exposed to social attitudes that devalue women do not commit acts of violence against their domestic partners. For violence to occur, the perpetrator must also find the opportunity and social permission to “get away with it,” and choose to act abusively. Opportunities for domestic violence occur in environments where it is tolerated. Abusers who believe that they will “get away with” violence against their domestic partners will have no motivation to change their behavior, particularly if they have learned that violence is effective to get them what they want in their intimate relationships. Indeed, social tolerance for domestic violence reinforces the lessons of violence by allowing abusers to succeed in controlling their intimate partners without suffering negative consequences. The criminal justice system plays a critical role in ending opportunities for abuse by treating violence against an intimate partner at least as seriously as it treats violence against a stranger.

Courts can end opportunities for abuse by:

- F Restricting abusers' access to identifying information about their partners who are in hiding.
- F Providing a safe environment for persons who come to the courthouse.
- F Requiring the abusive party to bear the financial consequences of abuse.
- F Issuing custody and parenting time orders with specific provisions that promote safety, including supervised parenting time orders.
- F Requiring the abusive party to complete appropriate intervention and demonstrate change before modifying more restrictive orders for parenting time.

3. The Perpetrator Has Chosen to Abuse

Learning and opportunity alone do not produce domestic violence. The third prerequisite to violent behavior is the perpetrator's choice to engage in it. Domestic violence is a choice; it is not “out-of-control” behavior. Common abusive behavior patterns illustrate how abusers calculate their actions to avoid risk to themselves, while maximizing control over their intimate partners. Some abusers injure only those parts of their partners' bodies that are

not readily seen by others. Others batter their partners instead of other people over whom they have no control, such as their employers. Many abusers will destroy their partners' possessions, while leaving their own intact. These behaviors evidence choice, not loss of control.

Courts can play a critical role in discouraging domestic abuse by treating violence between domestic partners at least as seriously as violence between strangers. Indeed, domestic violence may be a more serious threat to the victim and society than stranger violence, for it entails an increased risk of repeat assault on the victim and the potential for long-term harm to children who witness it. When a court consistently and fairly enforces the laws against domestic violence it helps to remove opportunities for violence. When a court's orders hold abusers accountable for the harm they inflict, the court contributes to an environment in which domestic violence is just as unacceptable as any other type of violence.

B. Factors That May Accompany Domestic Violence

Domestic violence is often accompanied by circumstances such as alcohol and drug use, stress, unresolved anger, or problems with the relationship. The following discussion briefly explores the complex relationships between these factors and domestic violence.

F Alcohol and drug use

Although studies show a high correlation between alcohol and drug use and domestic violence, researchers have rejected a causal connection between them. Studies have found that alcohol abuse by men is associated with an increased likelihood of injury as a result of domestic violence, and that abusers with a history of heavy drug or alcohol use tend to engage in intensified violence toward their domestic partners. Alcohol and drug use can lower the abuser's inhibitions and provide an excuse for "losing control." Indeed, some abusers admit to using alcohol in certain situations in order to give themselves permission to batter.*

Because alcohol and drug use do not cause domestic violence, effective intervention in cases where the abuser is drug or alcohol dependent must be directed at *both* the violence and the substance abuse. See Batterer Intervention Standards for the State of Michigan, §5.1 (January 20, 1999), stating that "[t]reatment for drug/alcohol...problems shall not be substituted for [batterer intervention services]." Because it may intensify the severity of violence, drug and alcohol use is one of the factors to consider in assessing whether the abuser is likely to kill or seriously injure an intimate partner.*

F Stress and anger

Researchers do not agree on the relationship between stress and anger and domestic violence. However, there is consensus among batterer intervention service providers that it reinforces an abuser's denial of responsibility for the abuse to emphasize lack of anger management,

*See Ganley, *supra*, p 11–12; Kyriacou, et al, *Risk Factors for Injury to Women from Domestic Violence*, 341 New England J of Medicine (Dec 16, 1999).

*The Batterer Intervention Standards are reproduced at Appendix C. Discussion about them appears at Section 2.3–2.4. See Section 1.4(B) for more discussion of lethality factors.

stress management, or communication skills as the primary cause of domestic abuse. The Batterer Intervention Standards for the State of Michigan acknowledge that abusers may benefit from learning stress or anger management skills, but require batterer intervention programs teaching these skills to do so as part of a broader program that regards violence as a choice for which abusers must be held accountable. Batterer Intervention Standards for the State of Michigan, *supra*, §§7.1, 7.3(d).

F Problems inherent in the relationship

Abusers frequently escape responsibility for their violent choices by blaming the abuse on their intimate partners. Blaming the relationship is a variation on this theme, because it gives the intimate partner at least partial responsibility for the abuse. However, most people who experience relational difficulties respond to them without violence.* Safe, effective domestic violence interventions recognize that only the abuser has the power to stop the abuse.

Persons subject to domestic abuse are endangered by traditional couples counseling and family therapy modalities that require them to share responsibility for the abuse by working cooperatively with the abuser to resolve the difficulties with the relationship. These treatment methods are dangerous insofar as they place abused individuals in the position of self-disclosing information that may later be used against them by their abusers. Moreover, couples or family counseling may create opportunities for abuse by physically bringing the abuser to the same location as an intimate partner. Finally, where an abused individual is expected to work cooperatively to resolve the difficulties in the relationship, the blame for the abuse may implicitly be fixed on that individual. An abuser may feel justified in using abuse as “punishment” when the couple’s difficulties continue; indeed, many domestic violence victims report assaults following couples therapy sessions.* See also Batterer Intervention Standards for the State of Michigan, *supra*, §7.3(b), discussed at Section 2.4(B).

For similar reasons, many domestic violence and batterer intervention service providers assert that mediation, community dispute resolution, and arbitration are not appropriate when domestic violence is present.* Because these interventions require equal bargaining power between the parties, they cannot operate fairly in situations involving domestic violence, where the abuser is in control. Furthermore, domestic violence cannot be a subject for negotiation or settlement between the abuser and an intimate partner because the partner has no responsibility for changing the abuser’s behavior. This is particularly true where the abuse rises to a criminal level; mediation between a crime victim and perpetrator is just as inappropriate in cases involving domestic violence as it is in cases involving stranger violence. See Batterer Intervention Standards for the State of Michigan, *supra*, §7.3(c).

*Ganley, *supra*, p 13–14.

*Stordeur & Stille, *Ending Men’s Violence Against Their Partners*, p 25–26 (Sage Publications, 1989); Walker, *The Battered Woman Syndrome*, p 118 (Springer, 1984).

*For more discussion of concerns with mediation, see Section 10.6.

C. Illness-based Violence

*Stordeur & Stille, *supra*, p 24–26; Ganley, *supra*, p 11.

Most researchers regard domestic abuse as a learned, chosen pattern of behavior, rejecting the notion that it is a form of psychological or biological illness over which the abuser lacks control. In some cases, however, domestic violence may be the product of a mental illness such as psychosis or Alzheimer’s Disease. Unlike cases where the violence is learned, chosen behavior, these cases truly involve a loss of control by the abuser. Illness-based violence can be distinguished from learning-based violence in several ways:*

- F The perpetrator of illness-based violence does not usually select a particular, consistent victim; instead, abuse is directed at any person present when the violent impulses arise.
- F Illness-based violence is often accompanied by other symptoms of disease, such as changes in speech or gait, or delusional thinking.
- F Poor recall of the abuse does not necessarily indicate illness-based violence. Abusers who are not mentally ill often deny or minimize their behavior.

1.4 Understanding the Abuser — The Potential for Lethality

This section will explore some common characteristics of domestic abusers, as well as factors that are often present in situations when an abuser is more likely to kill or inflict serious physical harm.

A. Characteristics of the Abuser

*Rygwelski, *Beyond He Said/She Said*, p 11, 20–24 (Mich Coalition Against Domestic Violence, 1995).

Domestic violence occurs in all social groups. It is not restricted to the ranks of the impoverished, unemployed, or substance-dependent. Because it often occurs within the privacy of the home, domestic violence may be well-hidden from outside observers, including family members who are not living in the household where the abuse occurs. Indeed, many abusers appear to be devoted to their families, and have positive characteristics that mask the injuries they inflict.*

Although there is no “typical” abuser, domestic violence perpetrators commonly exhibit certain characteristics. Some of these characteristics include:

F Dependency and jealousy

*Stordeur & Stille, *Ending Men’s Violence Against Their Partners*, p 44–46 (Sage Publications, 1989). See Section 1.4(B) on other lethality factors.

Many abusers are extremely jealous and possessive of their intimate partners. Possessive abusers are emotionally dependent on their partners, which makes them susceptible to a number of conflicting emotions, including fear of abandonment, and anger at their dependence. In the context of these feelings, an abuser’s behavior may be seen as an effort to prevent abandonment, or as a means of denying the need for the partner’s companionship. Extremely jealous abusers may be so possessive that they are willing to kill their partners rather than face losing control over them.*

F Belief in men’s entitlement to dominate women

Male abusers may subscribe to a rigid ideal of men’s dominant role, with the accompanying belief in men’s entitlement to control persons and events in the household.*

*Stordeur & Stille, *supra*, p 51–52.

F Isolation

Some abusers are psychologically and socially isolated. Isolated abusers tend to be distrustful of others, afraid of intimate relationships, and unable to share or recognize emotions other than anger. While they may have numerous contacts and acquaintances within the community, these tend to be superficial. An isolated abuser may have increased dependence on the intimate partner, along with the attendant jealous, possessive behavior.*

**Id.*, p 49–50.

F “Jekyll and Hyde” personality

Most abusers are not violent all the time — their intimate partners and others often describe them as charming and lovable. The loving, caring facet of an abuser’s behavior can be one means of convincing an intimate partner to stay involved in the relationship after a violent incident.*

**Id.*, p 48–49.

F Poor interpersonal skills

Many abusers may appear to be charming and lovable on the surface level, especially to those outside the family. Within the family, however, they do not demonstrate the same level of interpersonal relational skills. Abusers often use anger and violence to manage conflict or express feelings. They may confuse assertiveness with aggression, and misperceive neutral communications or interactions as being threatening or insulting to them; for example, a partner’s brief delay in meeting him may cause an abuser to assume that she is having an affair.*

*See *id.*, p 38–41.

F Refusal to accept responsibility for the violence

When confronted with their violent behavior, abusers commonly avoid responsibility by denying that it occurred, lying about it, minimizing its nature or significance, or blaming it on outside factors such as stress, drunkenness, or provocation from their partners. The court may hear such statements as:

- “It was an accident.”
- “I didn’t hurt anyone — I didn’t even use my fist.”
- “The kids didn’t see it.”
- “The cop didn’t like me.”
- “I couldn’t take the nagging anymore.”
- “I was drunk.”
- “I’ve been under a lot of pressure lately, and I lost control.”
- “She’s having an affair. I just want to save my family.”
- “I’m the real victim here.”*

*See Ganley, *Domestic Violence: The What, Why & Who, as Relevant to Civil Court Cases*, App C, p 14–16, in Lemon, *Domestic Violence & Children: Resolving Custody & Visitation Disputes* (Fam Violence Prev’n Fund, 1995).

B. Lethality Factors

*Rennison & Welchans, *Intimate Partner Violence*, p 1, 3 (Bureau of Justice Statistics, May, 2000).

*More discussion of lethality factors appears in Batterer Intervention Standards for the State of Michigan, Appendix A (Jan 20, 1999). See Appendix C of this benchbook for the full text of the Standards.

Although the National Crime Victimization Survey reports that intimate partners committed fewer murders in each of the three years 1996, 1997, and 1998 than in any other year since 1976, domestic violence perpetrators still kill their victims with alarming frequency. In 1998, the Survey reported 1830 murders attributable to intimate partners (down from 3000 murders in 1976). Fifty-three percent of these 1998 murder victims were killed by their spouses (down from 75% in 1976). Women are more likely than men to be the victims of domestic homicide. The Survey reports that women were nearly three out of four victims of the 1830 murders attributed to intimate partners in 1998.* This deadly potential requires vigilance in all cases involving domestic violence.

Assessing the lethality of a situation involving domestic violence is difficult. Domestic violence is often unpredictable. In some cases, an abuser may not “intend” to use lethal force, but may miscalculate with fatal consequences. Lethal violence may occur unexpectedly, without any advance warning from the abuser’s behavior, or it may be preceded by one or more circumstances that serve as danger signals. In the latter case, researchers have found that certain factors can often accompany an abuser’s potential for serious violence. While it is impossible to predict with certainty what a given abuser will do, the presence of the following factors can signal the need for extra safety precautions — the more of these factors that are present in a situation, the greater its danger:*

- F The couple has recently separated. Separation may cause the abuse to escalate as the abuser attempts to maintain control in the relationship.
- F The abused partner (who is familiar with the abuser’s behavior) believes the abuser’s threats may be lethal.
- F The abuser threatens to kill an intimate partner or other persons.
- F The abuser threatens or attempts suicide.
- F The abuser fantasizes about homicide or suicide.
- F Weapons are accessible, and/or the abuser has a history of using weapons.
- F The abuse involves strangling, choking, or biting the intimate partner.
- F The abuser has easy access to the intimate partner or to the intimate partner’s family.
- F The couple has a history of prior calls to the police for help.
- F The abuser exhibits stalking behavior.
- F The abuser is jealous and possessive, or imagines the intimate partner is having affairs with others.
- F The abuser is preoccupied or obsessed with the intimate partner.
- F The abuser is isolated from others, and the intimate partner is central to the abuser’s life.
- F The abuser is assaultive during sex.

- F The abuser makes threats to the intimate partner's children.
- F The abuser threatens to take the intimate partner hostage, or has a history of hostage-taking.
- F The severity or frequency of violence has escalated.
- F The abuser is depressed or paranoid.
- F The abuser or intimate partner has a psychiatric impairment.
- F The abuser has experienced recent deaths or losses.
- F The abuser was beaten as a child, or witnessed domestic violence as a child.
- F The abuser has killed or mutilated a pet, or threatened to do so.
- F The abuser has started taking more risks, or is "breaking the rules" for using violence in the relationship (e.g., after years of abuse committed only in the privacy of the home, the abuser suddenly begins to behave abusively in public settings).
- F The abuser has a history of assaultive behavior against others.
- F The abuser has a history of defying court orders and the judicial system.
- F The intimate partner has begun a new relationship.
- F The abuser has problems with drug or alcohol use, or assaults the intimate partner while intoxicated or high.

One researcher has noted that the pattern of risk factors is not the same across offenders, and makes a connection between a male abuser's childhood experiences and his behavior:

"[S]ome offenders are violent only at home while others attack non-family members. The particular childhood experiences seem to be related to differing patterns of abuse and personality. In one pattern, severe physical abuse in childhood is associated with anti-social personality, a 'criminal lifestyle', a lack of remorse, violence inside and outside the home, substance abuse, and severe violence against a partner. In a second pattern, severe loss or emotional rejection in childhood is associated with borderline personality traits, fear of abandonment, jealousy, severe psychological abuse of one's partner, depression, and suicidality. This may be the type of offender who is most likely to stalk and kill his partner after separation, sometimes killing himself as well. In a third pattern, childhood trauma is not evident and violence is restricted to the home. The men appear to be over-controlled...and perfectionistic with themselves and others. They are the least likely to be severely violent and have less rigid sex role attitudes than the other types. Typology research has helped to identify the men most likely to be severely violent during and after the relationship. In addition, there are a growing number of assessment tools for uncovering indicators of lethality. The most widely used is the Danger Assessment Instrument, but others are being developed and validated, such as the Spousal Assault Risk Assessment (SARA) instrument." Saunders, *Domestic Violence Perpetrators: Recent Research Findings and Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3, 4 (Fall, 1999).

Some studies (especially those involving women in shelters or women who sought help after severe abuse)* indicate that domestic violence tends to

**Id.*, p 3, 5.

escalate in frequency and seriousness over time, particularly where there is no effective intervention from the justice system or other social institutions. The existence of this dynamic makes it important to treat domestic violence incidents as a serious threat to the victim from their earliest manifestations — many domestic violence homicides might be prevented with early intervention against abusive behavior.

For many women, intimate partner violence begins during pregnancy. Pregnancy as an independent risk factor for lethal violence is under investigation. One study has reported that between 1993 and 1998, homicide was the leading cause of death among pregnant or recently-pregnant women in Maryland. In contrast, homicide was the fifth leading cause of death among non-pregnant women during the same time period. The study did not, however, report the percentage of pregnancy-associated homicides committed by intimate partners. See Frye, *Examining Homicide's Contribution to Pregnancy-Associated Deaths*, and Horon and Cheng, *Enhanced Surveillance for Pregnancy-Associated Mortality — Maryland, 1993-1998*, in 285 J of the American Medical Ass'n 1510, 1455 (March 21, 2001).

1.5 Abusive Tactics

An abuser's primary motivation is to maintain control over an intimate partner. Abusers are master manipulators, who employ physical assault in conjunction with other tactics to achieve their objective. Abusers' tactics have been compared to the brainwashing tactics used against prisoners of war, which include isolation, threats, occasional indulgences, demonstrations of power, degradation, and enforcement of trivial demands. Abusers may employ similar patterns of physical, sexual, financial, and emotional coercion to control their intimate partners.* These tactics prevent abused persons from leaving a relationship. In addition to physical assaults or threats, abusers' control tactics may include:

F Emotional abuse

Emotional abuse may consist of isolating an intimate partner from family and friends, making degrading remarks, blaming the partner for the abuse, constantly monitoring the partner's activities, stalking, playing "mind games," making and enforcing extensive, egregious rules, and threatening suicide if the partner leaves the relationship.

F Using children as vehicles for abuse

Abusers frequently involve their partners' children in their efforts to assert control. Some abusers kidnap, sexually abuse, or physically harm their partners' children, or threaten to commit one of these acts. Others initiate or threaten to initiate court proceedings to remove the children from their partners' homes, or use court-ordered parenting time as an opportunity to harass their partners. Abusers may also force children to act as informers, or to deliver threats.

*Walker, *The Battered Woman Syndrome*, p 27–28 (Springer, 1984); Graham & Rawlings, *Bonding with Abusive Dating Partners: Dynamics of Stockholm Syndrome*, in *Dating Violence: Young Women in Danger*, p 121–122 (Levy, ed, Seal Press, 1991). A chart illustrating abusive tactics appears in Section 1.8.

F Controlling the finances

An abuser may maintain control in a relationship by limiting a partner's access to the couple's money, or by preventing the partner from participating in job training, or from getting or keeping a job. This interference with economic independence makes financial abuse a major obstacle to leaving a relationship.

F Sexual abuse

This form of abuse includes rape, forced sexual acts, verbal degradation, forced sexual contact in front of the children, threats to find another partner if sex is refused, and injury to the sexual areas of the body. Sexual abuse may also include the abuser's refusal to take appropriate precautions against unwanted pregnancy or sexually transmitted diseases.

Abusers may extend their controlling tactics to situations within the courtroom. Such tactics may be employed before, during, and after court proceedings to demonstrate control, and to manipulate the court's response to the abuser. The following list gives examples of abusive tactics that court personnel may encounter:*

- F Physical assaults or threats of violence against the abused person, those providing refuge, and others inside or outside the courtroom.
- F Threats of suicide.
- F Threats to take the children.
- F Harassment intended to coerce the abused person to dismiss proceedings, or to recant previous testimony.
- F Following an intimate partner in or out of court.
- F Sending an intimate partner notes or "looks" during proceedings.
- F Bringing family or friends to the courtroom to intimidate the abused person.
- F Long speeches about how an intimate partner "made me do it."
- F Statements of profound devotion or remorse to the intimate partner and to the court.
- F Repeated requests for delays in proceedings.*
- F Requests for changes of counsel or failure to follow through with appointments of counsel.
- F Intervening in the delivery of information from the court to the abused person so that the abused person will be unaware of when to appear in court.
- F Continually testing the limits of parenting time or support arrangements, e.g., arriving late or not appearing at appointed times.
- F Requests for mutual orders of protection as a way to continue control over the abused person and to manipulate the court.*
- F Threats and/or initiation of custody fights to gain leverage in negotiations over financial issues.

*From Tennessee Domestic Abuse Benchbook, p 23–24 (Tenn Task Force Against Domestic Violence, 1996). See also Zorza, *Batterer Manipulation & Retaliation in the Courts*, 3 Domestic Violence Report 67 (June/July, 1998). Threats by an abuser may indicate an actual high risk that the abuser will carry out the threatened behavior.

*See *Ostevoll v Ostevoll*, __ F Supp 2d __; 2000 WL 1611123 (No C-1-99-961, SD Ohio, Aug 16, 2000) for an example of this type of conduct.

*Mutual personal protection orders are not permitted under Michigan law.

*Serious misdemeanors are defined in MCL 780.811(a); MSA 28.1287(811) (a). They include stalking, assault and battery, aggravated assault, illegal entry, and discharging a firearm aimed intentionally at a person.

- F Assertions that the abusive individual is actually the “victim” in the case.
- F Initiating retaliatory litigation against the abused person or others who support the abused person.
- F Enlisting the aid of parent rights groups to verbally harass the abused person (and sometimes courts) into compliance with demands.
- F Using any evidence of the effects of the abuse as evidence that the abused person is an unfit parent.

The court can take steps to intervene in abusive courtroom tactics, as follows:

- F Develop a safe waiting area in the courthouse. MCL 780.757 and 780.817; MSA 28.1287(757) and 28.1287(817) provide that in criminal proceedings regarding felonies or serious misdemeanors, “[t]he court shall provide a waiting area for the victim separate from the defendant, defendant’s relatives, and defense witnesses if such an area is available and the use of the area is practical. If a separate waiting area is not available or practical, the court shall provide other safeguards to minimize the victim’s contact with defendant, defendant’s relatives, and defense witnesses during court proceedings.”*
- F Call cases involving domestic violence as early as possible on the court calendar.
- F Communicate that the court takes evidence of domestic violence seriously.
- F Require the abusive party to remain in the courthouse until the abused party has left the building.
- F Be alert for multiple court actions or orders concerning the same parties.
- F Meet separately with the parties to a relationship where domestic violence is present.

1.6 Living with Abuse

A. Responses to Abuse

Women who are subject to domestic abuse exhibit no specific “personality profile” that differentiates them from other women. Indeed, research indicates that many commonly-noted responses to domestic abuse are logical under the circumstances. For example, some research shows that abused women leave and return to abusers many times before making a final break with the relationship.* This research notes a progression in some situations:

- F Some women do not leave after a first assault, even though they disapprove of the violence. They may see the abuse as an aberration, and remain with the abuser to work on the relationship. Alternatively, they may be afraid to leave the relationship for fear the violence will escalate.
- F If the violence continues, some women may leave for a few days, to gain immediate safety, to think about the relationship, or to get the perpetrator to stop. At this stage, the perpetrator may respond by pursuing the partner, promising to change, apologizing, or trying to

*See Schechter & Ganley, *Domestic Violence: A National Curriculum for Family Preservation Practitioners*, p 93–94 (Family Violence Prevention Fund, 1995).

reform. Women at this stage may perceive that they have achieved their goal. They may leave and return several times, and try various other strategies (including court intervention) in the hopes of improving the relationship.

- F Later, women may leave and return without any hope of change. They may return due to one or more obstacles to leaving permanently, such as lack of housing or job skills. These obstacles are discussed in more detail below.

Researchers noting this progression have observed that the women's behavior at each state is logical, pointing out that ambivalence over leaving an important relationship is normal. Indeed, leaving any important life relationship is a process for most people.

Abused individuals may also display some of the same expected responses to trauma that survivors of other life-threatening situations display.* Responses to trauma may include:

- F Shock.
- F Disbelief.
- F Fear.
- F Withdrawal.
- F Confusion.
- F Panic or excitement.
- F A belief that "everything will be okay."
- F Minimization or denial of the traumatic events, or reluctance to discuss what has happened.
- F Rationalizing or taking responsibility for what has happened.
- F Posttraumatic stress disorder.
- F Depression.

B. Coping and Survival Strategies

Persons who are subject to domestic abuse use active strategies for surviving the experience. Strategies for surviving domestic abuse vary, depending upon the abused individual's individual personal characteristics and the nature of his or her social environment. Some individuals may appear to be no different from those not experiencing violence, having adopted behavior that conceals the abuse they suffer. Others may engage in behavior that appears illogical or erratic to outside observers. Most researchers believe that such behavior is best understood as a logical survival or coping response to the abuse.* Abused individuals may employ some of the following common survival or coping strategies:

*Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3, 4 (Fall, 1999). Some of the listed responses to trauma appear in *New Service Provider Training Manual & Resource Guide*, p 27 (Mich Coalition Against Domestic & Sexual Violence, 1999).

*Walker, *The Battered Woman Syndrome*, p 7–10, 33 (Springer, 1984).

*Douglas, *The Battered Woman Syndrome*, in *Domestic Violence on Trial*, p 43 (Sonkin, ed, Springer, 1987).

*Rygwelski, *Beyond He Said/She Said*, p 25 (Mich Coalition Against Domestic Violence, 1995).

*Saunders, *supra*, p 3, 5, See also Douglas, *supra*.

*Greenfeld, et al, *Violence by Intimates*, p 19 (Bureau of Justice Statistics, 1998). The data in the analysis were collected between 1992–1996.

F Minimizing or denying the violence

Like abusers, some abused persons may minimize or deny the violence in their lives. They may deny or minimize the violence in the abuser's presence or in public settings (such as court proceedings) in order to protect themselves from further retaliatory violence. Abused persons may also minimize their experiences with violence or their emotional responses to it to survive the emotional trauma they suffer.*

F Taking responsibility for the violence

Instead of objecting to the violence against them, some abused persons may blame themselves for it. In doing so, these individuals focus on their own perceived failings as a cause of the abuse, rather than on the abuser's choice to use violence. This attitude may arise because the abuser has convinced the abused person to take the blame, or because the abused person has submitted to the abuser's exercise of control in the relationship.* Taking responsibility for the violence may give some victims a sense of control over it. These victims believe that if they change the behavior that seems to be causing the violence, it will stop.

F Using alcohol or drugs

Persons subject to abuse may use alcohol or drugs as a means of numbing the effect of the violence; one researcher notes that substance abuse problems are likely to be consequences of abuse rather than precursors.* If the abuser is alcoholic or drug dependent, the intimate partner may be forced to join in the use of these substances to prevent abuse. Some abused persons receive prescription medication from their physicians as a means to cope with the anxiety resulting from the abuse. These medications may impair the ability to judge the dangerousness of an abusive situation or to seek protection.

F Self defense

Persons subject to domestic abuse often act to defend themselves or their children. A recent analysis of data on crimes by current or former spouses, boyfriends, or girlfriends published by the Bureau of Justice Statistics reported that 77% of female victims of nonlethal intimate violence actively defended themselves.* Of these, 43% tried to escape from the offender, called the police or other help, or used other non-confrontational means of self-defense. Thirty-four percent confronted the offender by struggling, shouting, chasing or other means without a weapon (30%) or with a weapon (4%).

F Seeking help

Many people who suffer domestic abuse actively seek help, often without success. Justice system professionals may not recognize the validity of an individual's efforts to obtain help from sources outside the "system"; however, these "informal" sources of assistance may be the first to which an abused individual turns. It is important to note that an individual's help-seeking behavior often depends upon the responses they have received or observed in the past.

F Remaining in the relationship

Leaving any important relationship is difficult. Leaving an abuser can have serious physical consequences for the abused person. In response to their partners' efforts to leave, many abusers will escalate the physical violence — often to lethal levels — as they seek to reassert control in the relationship.* When seen in this light, the seemingly illogical decision to stay with an abuser makes sense as a survival tactic.

The threat of death or serious injury upon separation from the abuser is not the only obstacle to leaving a relationship where domestic violence is present. Individuals trapped in such relationships often face other formidable barriers to escape, including:*

- Concern for the children's welfare.
- Lack of employment skills, or financial dependence on the abuser.
- Lack of housing upon leaving the relationship.
- Inability to afford legal assistance with divorce, custody, or protection order proceedings.
- Fear of the court system's intervention.
- Fear of losing custody of the children if the violence is reported or revealed in divorce proceedings. Some abusers deliberately give their partners misinformation about their legal rights to prevent them from seeking legal recourse.
- Isolation from the social or family connections that could otherwise provide support after leaving the relationship.
- Acceptance of the blame for the abuse. Some abused individuals attempt to change in the hopes that the abuse will stop.
- Belief in the abuser's expressions of remorse and promises to change.
- Lack of self-confidence caused by believing statements made by the abuser such as, "You are worthless without me," or "Nobody cares about you but me."
- Religious or cultural constraints. If a woman believes that her male partner must be the dominant figure in her household, she may regard his abuse as an acceptable extension of his dominance. Under this family concept, she may believe that her efforts to escape are inappropriate. She may also believe that if she ends the relationship in order to escape the abuse, she will lose her connection with her religious or cultural community.

Note: Lesbian and gay individuals may stay with abusive intimate partners for the same reasons as heterosexual individuals stay, e.g., financial dependence, fear of retaliation, fear of court intervention, and lack of will to resist the violence. Due to society's reluctance to accept same-sex relationships as legitimate, social isolation may be felt more intensely by many abused gay and lesbian individuals. Gay and lesbian individuals may be reluctant to seek outside intervention in an abusive relationship because they fear discrimination by criminal justice authorities, or public exposure as members of the lesbian or gay communities. For HIV-infected persons who are financially or physically dependent on an abusive partner, leaving the relationship may seem impossible. For abused individuals whose partners are HIV-

*Recent separation from the abuser is a lethality factor. See Section 1.4(B).

*The listed obstacles are taken from Jones, *Why Doesn't She Leave?* 73 Mich Bar J 896 (1994); Ganley, *Domestic Violence: The What, Why & Who, as Relevant to Civil Court Cases*, Appendix C, p 20–25, in Lemon, *Domestic Violence & Children: Resolving Custody & Visitation Disputes* (Family Violence Prevention Fund, 1995).

infected, leaving the relationship may mean leaving an ill or dying person without a primary caregiver, and facing the disapproval of a circle of friends who may not regard the abuse as a serious problem. See Elliott, *Shattering Illusions: Same-Sex Domestic Violence*, p 5-7, and Letellier, *Twin Epidemics: Domestic Violence and HIV Infection Among Gay and Bisexual Men*, p 77-78 in *Violence in Gay and Lesbian Domestic Partnerships* (Renzetti and Miley, eds, Harrington Park Press, 1996).

Some researchers working with abused individuals have noted a survival response to abuse known as the “Stockholm Syndrome.” This dynamic was first noticed in 1973 after hostages in a bank holdup in Stockholm, Sweden, bonded with the captors who had held them for six days. Based on studies of this group and other hostage groups (including battered women), researchers have suggested that bonding to an abuser or captor may be an instinctive survival function for individuals who:

- F Perceive a threat to survival and believe that their captor is willing and able to carry out the threat;
- F Perceive a small kindness from the captor within the context of the terrifying experience;
- F Are isolated from the perspectives of persons other than their captors; and,
- F Believe they cannot escape.

The effect of the foregoing conditions on the captive individual has been described as follows:

“As a result of being traumatized, the victim needs nurturance and protection. Being isolated from others, the victim must turn to her abuser for the needed nurturance and protection if she turns to anyone. If the abuser shows the victim some small kindness, this creates hope in the victim, who then denies her rage at the terror-creating side of the abuser — because this rage would be experienced as overwhelming — and bonds to the positive side of the abuser. With the hope that the abuser will let her live, the victim works to keep the abuser happy, becoming hypersensitive to his moods and needs. To determine what will keep the abuser happy, the victim tries to think and feel as the abuser thinks and feels. The victim therefore (unconsciously) takes on the world view of the abuser. Because so much is at stake, namely her survival, the victim is hypervigilant to the abuser’s needs, feelings and perspectives. Her own needs (other than survival), feelings and perspectives must take second place to the abuser’s. Also, the victim’s needs, feelings and perspectives can only get in the way of the victim doing what she must do to survive: they are, after all, feelings of terror. Therefore, the victim denies her own needs, feelings and perspectives.” Graham and Rawlings, *Bonding with Abusive Dating Partners: Dynamics of Stockholm Syndrome*, in *Dating Violence: Young Women in Danger*, p 121–122 (Levy, ed, Seal Press, 1991).

C. Survival and the Court System

Efforts to survive or cope with domestic violence may appear in many forms in court proceedings. An abused individual may:

- F Publicly agree with the abuser's denial or minimization of a violent incident.
- F Avow love for the abuser.
- F Make statements supporting the abuser.
- F Flee the jurisdiction, along with the children.
- F Abandon proceedings.
- F Agree to unfair property settlements or support provisions.
- F Agree to what outsiders see as unsafe provisions for child custody or parenting time.

Although the foregoing actions may seem illogical to observers outside of a relationship, they make sense if they are regarded as survival tactics and normal human responses to trauma.* Persons subject to domestic violence know their abusers better than anyone else, and they choose active strategies to minimize injury based on past success. Although the strategies above may not be to the long term advantage of an abused person, many such individuals are so involved in a day-to-day struggle to preserve their own lives and the lives of their children that they cannot focus on the long range effects of the violence, or on the task of forging a new life apart from the abuser. Accordingly, they are likely to view a court proceeding only in terms of its immediate effect upon their safety. The following discussion explores some of the specific concerns that affect domestic violence victims during court proceedings.

*Ganley,*supra*, p 23;
Rygwelski,*supra*, p 26.

1. Coercion

Abused individuals may be unable to protect their interests in court proceedings due to a legitimate fear of death or injury at the hands of an abuser.* Abusers frequently coerce their intimate partners to remain silent about the violence, either by injuring them so that they cannot speak, or by threatening them with death or injury. Coercive threats may also extend to others who associate with an abused person. The following factors may indicate coercion:

*See Section 1.4(B) for a list of lethality factors.

- F The abused person appears in court with the abuser to request that court proceedings be terminated.
- F One attorney appears in court to act on behalf of both the abuser and the abuser's intimate partner.
- F The abuser has a history of past violence.

If any of these factors is present (or any other suspicious circumstance), the Advisory Committee for this chapter of the benchbook recommends that the court obtain more information about the parties' situation before taking action. See Section 10.3 of this benchbook for a discussion of strategies for identifying cases in which violence or coercion is present.

*The evidentiary issues in *People v Adams* are discussed at Section 5.2(A).

2. Uncertainty About the Court's Intervention

An abused person's past experience with the court system may contribute to the perception that it will neither stop the violence nor offer adequate protection from injury. The following factors can erode the confidence of persons who are subject to abuse:

- F Procedural delays. For a case illustrating how delays can put an abused individual at risk of harm and discourage participation in court proceedings, see *People v Adams*, 233 Mich App 652 (1999). In this case, the defendant was charged with assault with intent to murder his former girlfriend. The complainant appeared to testify at a preliminary examination that was adjourned and rescheduled. After the adjournment, the mother of defendant's new girlfriend shot at the complainant. After this incident, the complainant reluctantly testified at the rescheduled preliminary examination, but on the morning of defendant's trial, she was upset and nervous about testifying against defendant. She abruptly left the courthouse without warning or notice before proceedings began, making her unavailable to testify. The trial court refused to admit the complainant's preliminary examination testimony into evidence at trial.* Finding this decision erroneous, the Court of Appeals made the following comment:

"Although neither this Court nor the trial court has a statement or affidavit from the complainant explaining why she left the courthouse, her absence coupled with the type of crimes with which defendant was charged and her statements during the preliminary examination regarding the threats to her by others connected to defendant paint a fairly vivid picture. They do not, as the trial court surmised, equally support the conclusion that she wanted to 'drop the charges.' We are cognizant that all too often, the victims of domestic assault and abuse are fearful and reluctant to assist in the prosecution of their assailants, often as a result of a defendant's or his family's intimidation tactics or out of fear of future reprisals. These fears are too often justified. We cannot simply conclude that the complainant's last-minute decision to silently leave the courthouse was motivated by her belief that defendant would not be prosecuted without her testimony or that by leaving she would not face his wrath in the future. To the contrary, our experience in these matters makes us more likely to believe that her departure was motivated by self-preservation rather than a change of heart." 233 Mich App at 658.

- F Complex court proceedings.
- F Discourteous court employees.
- F Misinformation about the court system given by the abuser, uninformed service providers, or others.
- F Vague, easily manipulated court orders that provide opportunities for further abuse.
- F Court employees' disbelief that abuse is occurring.
- F Court orders that require the abused person to cooperate with the abuser or to have regular physical contact with the abuser.
- F Court orders that reward abusive tactics (e.g., awarding custody of children to an abusive parent because the abused parent cannot stop the abuse, rather than requiring the abusive parent to stop the abuse as a prerequisite to gaining access to children).

- F Conflicting orders in criminal, personal protection, and civil court proceedings.
- F Recurrence of violence despite the issuance of court orders restraining the abuser.
- F Failure of law enforcement officers to arrest abusers who violate court restraining orders.
- F Failure of prosecutors to prosecute domestic violence offenses.
- F Failure of courts to impose appropriate sanctions for domestic violence offenses.
- F Court orders that punish protective actions taken by the abused person, characterizing these actions as antagonistic or “unfriendly” to the abusive party.

A court can address the fears of abused persons in a number of ways:

- F To the extent possible, maintain the confidentiality of information in court documents that would identify the abused person’s whereabouts, if that person is in hiding from the abuser and there is a reasonable apprehension of acts or threats of physical violence or intimidation by the abuser.
- F Provide for expedited proceedings in cases involving domestic violence.
- F Provide domestic violence training for court personnel.
- F Provide clear information about court proceedings to unrepresented parties.
- F Craft specific, readily-enforceable orders tailored to address the abused person’s safety concerns.
- F Craft consistent orders in criminal, domestic relations, and personal protection proceedings.
- F Craft orders that hold the abuser accountable for the abuse.
- F Work with other units of the court system and with social service agencies to develop a clear, coordinated policy for situations involving domestic violence.

3. Effects of a Criminal Conviction on the Family

An abused individual’s interactions with the criminal justice system may be influenced by a fear of the social stigma or economic hardship that can result from a criminal conviction of the abuser. An incarcerated abuser will not be able to provide financial support for the family, and may experience difficulty in finding employment after the prison sentence has been completed. Furthermore, certain types of criminal convictions mandate a family’s eviction from a federally-subsidized residence, and may keep low-income people from being approved for assisted housing in the future. See, e.g., 24 CFR 882.413 and 982.553, which permit a Public Housing Authority to deny assistance to an applicant, or terminate assistance to a participant family if any member of the family commits any “[v]iolent criminal activity.” “Violent criminal activity” can encompass acts constituting domestic violence; it is

defined as “any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.” 24 CFR 882.102(b). A more complete discussion of this question appears at Doig & Simons, *Civil Consequences of Criminal Convictions for Low-Income Defendants*, 24 Criminal Defense Newsletter 1 (State Appellate Defender Office, December, 2000).

D. Prosecutorial Discretion and the Absent Witness

The prosecutor has exclusive authority to decide whether to go forward with the prosecution of a crime in the absence of the complaining witness. *People v Williams*, 244 Mich App 249, 252-253 (2001). In this case, the defendant was charged with assault with intent to do great bodily harm less than murder and third-offense habitual offender. The complainant was his girlfriend, who testified at his preliminary examination that she was severely beaten and sustained a broken nose, a broken jaw, and fractures of numerous other facial bones at his hands. She also testified at a pretrial evidentiary hearing, describing two prior incidents when the defendant had beaten her. During that testimony, she stated repeatedly that she did not want the defendant prosecuted for the instant assault. She was subpoenaed to appear at trial but failed to do so. The prosecutor requested a continuance or permission to use her former testimony at trial. The trial court denied both requests, concluding:

“This is not really what I would consider a public crime. This is a private crime....But I think that [the complainant] also has some rights too. This man has rights. [The complainant] has rights. If [the complainant] wants to commit suicide and not prosecute this fellow, then that’s her right, too, and I’m going to dismiss this case.” 244 Mich App at 251, n 1.

The prosecutor appealed and the Court of Appeals reversed, finding that the trial court had usurped the prosecutor’s exclusive authority to decide whom to prosecute:

“The trial court relied on the notion that because the victim and defendant were involved in a personal relationship, this assault amounted to a private, rather than a public, crime. The trial court further opined that it was the victim’s right to have the charges dismissed because she had evidenced a desire not to proceed. This is a notion that has pervaded those criminal cases that are commonly known as domestic assaults, but is a rationale that is unsupported by the law.

“Our Legislature enacted the Michigan Penal Code to...define crimes and prescribe the penalties for crimes. [Citations omitted.] In other words, as a matter of public policy, the code defines what acts are offenses against the state. The authority to prosecute for violation of those offenses is vested solely and exclusively with the prosecuting attorney. Const 1963, art 7, §4; MCL 49.153; MSA 5.751. A prosecutor, as the chief law enforcement officer of a county, is granted the broad discretion to decide whether to prosecute or what charges to file. [Citations omitted.] The prosecution is not for the benefit of the injured party, but for the public good. Crimes not only injure the victim, but society in general, and the conviction of a crime results not only in a sentence

enumerating the punishment in quantitative amounts, but also carries with it society's formal moral condemnation." 244 Mich App at 252-253.

In so holding, the Court of Appeals acknowledged that crime victims have statutory and constitutional rights under Const 1963 art 1, §24 and MCL 780.751 et seq; MSA 28.1287(751) et seq. However, these rights do not encompass the authority to "determine whether [the Penal Code] has been violated or whether the prosecution of a crime should go forward or be dismissed." 244 Mich App at 254.

1.7 Domestic Abuse and Children

The National Crime Victimization Survey reports that between 1993 and 1998, children under age 12 lived in 43% of the households where domestic violence occurred.* This section explores how children are exposed to adult domestic abuse, and how it affects them.

A. How Children Are Exposed to Adult Violence

Children are exposed to adult domestic violence in various ways:

- F They witness it.
- F They are used by the abuser to maintain control in the adult relationship.
- F They suffer physical consequences that accompany the adult violence.

1. Witnessing the Violence

Although parents often minimize or deny the presence of children during violent incidents, studies show that up to 90% of children are aware of domestic violence when it occurs in their households. Children perceive the adult violence in their homes in a variety of ways. They may be eyewitnesses to all or part of a violent incident, or they may catch a fleeting glance of it. They may hear the sounds of abuse — the screaming or crying, the breaking glass, the impact of the blows. Children can also see a parent's tears, along with the blood, bruises, torn clothing, splintered furniture, and broken glass that evidence abuse after an incident has occurred. Finally, children notice the tension between the adults — they may see their mother jump when her abuser's car pulls in the driveway, or when the abuser enters the room.*

*Rennison & Welchans, *Intimate Partner Violence*, p 6 (Bureau of Justice Statistics, May, 2000).

*Hart, *Children of Domestic Violence: Risks & Remedies*, Child Protective Services Quarterly (Pittsburgh Bar Ass'n, Winter, 1992); Walker, *The Battered Woman Syndrome*, p 59 (Springer, 1984).

*Ganley, *Domestic Violence: The What, Why & Who, as Relevant to Civil Court Cases*, Appendix C, p 27, in Lemon, *Domestic Violence & Children: Resolving Custody & Visitation Disputes* (Fam Violence Prevention Fund, 1995).

*See Section 1.4(B) on separation violence.

*Ganley, *supra*, p 26.

2. Using Children to Maintain Control in the Adult Relationship

A common tactic of domestic abusers is to use the children in the household to control their intimate partners.* Domestic abusers are likely to:

- F Interrogate the children about the abused parent's activities.
- F Force the abused individual to always be in the company of a child.
- F Take the child away after a violent episode to prevent the abused individual from fleeing.
- F Threaten violence against the child, or against a pet or object that is important to the child.
- F Encourage the child to participate in the physical or emotional abuse of the abused individual.
- F Isolate the child along with the abused individual.
- F Manipulate the children through gifts or promises of activities.
- F Coerce the abused individual to remain in the relationship for the sake of the children.

Because domestic violence may escalate when the abused individual attempts to leave the relationship, it should not be assumed that separation from the abuser will be sufficient by itself to protect the children from the violence.* The following abusive tactics may be employed after a separation:

- F Engaging in lengthy battles over custody or parenting time.
- F Detaining or concealing children.
- F Abducting the children, or holding them hostage.
- F Using parenting time to interrogate the children about the abused parent, or to blame the abused parent for the separation.
- F Using parenting time to abuse the children.
- F Demanding unlimited access to the children.
- F Making abusive contacts with the abused parent's home or work place under the pretext of arranging for access to children.

3. Physical Consequences of Violence for Children

Children living in homes where domestic violence occurs are at increased risk for suffering bodily injury. Such injury may be unintentional, occurring during the adult violence. Some children are harmed when they intervene to defend or protect a parent. Assaults on parents who are holding young children in their arms often result in injury to the children as well as the parents. Children can also be struck by furniture or other objects thrown by adults during an assault.*

Adult domestic violence can have other devastating physical consequences for children beyond bodily injury. Domestic violence can deprive children of housing, schooling, or medical care. As noted in Section 1.6(C)(3), a criminal conviction arising from domestic violence can lead to a family's eviction from federally-subsidized housing. Moreover, flight from domestic violence often leads to homelessness among children and their abused parents, and is a primary reason why adolescents run away from home.* Because abusers sometimes find partners who are in hiding by obtaining addresses from children's school or health care records, some abused individuals are reluctant to enroll their children in school or to seek medical care for them out of fear that the abuser will discover their whereabouts.

Children in homes where domestic violence occurs can also face dislocation at the hands of the court or child protection system, which may remove them from an abused parent's care — or terminate parental rights — due to a "failure to protect" them. Some domestic violence experts assert that the removal of children from the home on this basis is often founded on faulty assumptions,* namely:

- F The abused parent is principally responsible for the safety of the children. This assumption reinforces abusive behavior by placing the blame for it on the abused individual, thus allowing the abuser to escape responsibility for the negative consequences of the violence.
- F The abused parent has the power and resources to protect the children. This assumption overlooks abusers' control of the choice to behave violently toward their intimate partners, and their deliberate use of physical and psychological tactics to incapacitate their intimate partners.
- F The abused parent has not tried to protect the children. An abused person's efforts to protect children may have been ineffective (or perceived as ineffective) because they were met by a less-than-helpful criminal justice or social systems response, or did not involve a systems response.
- F An allegation of failure to protect may induce an abused individual to leave the abuser. This assumption does not account for the fact that the abused individual and the children may be at increased risk after separating from the abuser. (On separation as a lethality factor, see Section 1.4(B).)

Domestic violence experts suggest that a more effective way to protect children from adult violence is to protect the abused parent by intervening in the abuser's exercise of power and control and insisting that the abuser take responsibility for the violence. Balanced against this consideration, however, is the reality that some battered parents are so trapped in their circumstances that they cannot adequately care for their children. To address these dual concerns, Michigan's Child Protective Services has promulgated a policy and best practices guideline that states:

"Prior to substantiating neglect against a non-offending caretaker of domestic violence, based on failure to protect a child, the worker must assess whether the child was harmed or was/is at imminent risk. If the child was not harmed and/or is not at imminent risk, a substantiation of neglect based on failure to protect will not be made

*Rennison & Welchans, *supra*, p 8; Richie, *The Impact of Domestic Violence on the Children of Battered Women*, Children's Aid Soc Nwsltr, p 3 (Spring, 1992).

*See Zorza, *Batterer Manipulation & Retaliation in the Courts*, 3 Domestic Violence Report 68, 75 (June/July, 1998); Saunders, *Domestic Violence Perpetrators: Recent Research Findings & Their Implications for Child Welfare*, 3 Mich Child Welfare Law J 3 (Fall, 1999).

against the non-offending caretaker.” Cited in Cain and Hagen, *Protecting Children and Their Mothers*, 3 Mich Child Welfare Law J 12 (Fall, 1999).

Under Michigan’s Child Protective Services policy and best practices guidelines, domestic violence in and of itself does not constitute child maltreatment:

“A complaint in which the only allegation is domestic violence is not a sufficient basis for accepting the complaint for investigation. A complaint which alleges domestic violence must include information indicating that the domestic violence is causing harm or threatened harm to the child in order for the complaint to meet statutory parameters for CPS involvement....In situations where a child is a witness to domestic violence and there are resulting observable behavioral changes in the child, an investigation should be conducted.” Cited in Cain and Hagen, *supra*, p 14.

The Child Protection Law defines child abuse to include harm or threatened harm to a child that occurs through “nonaccidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment.” MCL 722.622(e); MSA 25.248(2). The statute does not define “physical or mental injury” or “maltreatment.” For cases discussing the question whether domestic violence subjects a child to physical or mental harm, see *In re Miller*, 182 Mich App 70, 80 (1990) (“Evidence of violence between parents in front of the children is certainly relevant to showing...that the home is an unfit place for children by reason of criminality or depravity”), and *In re Sours Minors*, 459 Mich 624, 634–636 (1999) (trial court was not justified in terminating the mother’s parental rights because her child was injured in an altercation between the parents, where the mother had separated from the father and there was not sufficient evidence that the mother’s new partner was abusive).

On the connections between domestic violence and child abuse, some researchers have noted that men who batter are at a “fairly high risk to physically abuse their children,” while battered women are “much less likely than their partners to abuse their children (50% vs. 25% in one national study) and their anger toward the children decreases when they are out of a violent relationship.” Saunders, *supra*, p 5. See also Cain and Hagen, *supra*, p 11, noting studies showing that 40% to 60% of homes with wife-abuse also have child abuse present in the home, and that 30% to 59% of mothers of abused children are battered women. For a case involving spousal abuse in which the court considered the accompanying risk of child abuse in reaching a determination regarding access to children, see *Walsh v Walsh*, 221 F3d 204, 220 (CA 1, 200). This case is discussed in detail in Section 13.12(C).

B. Effects of Adult Violence on Children

Whether they witness the abuse or are abused themselves, children suffer from involvement with adult domestic violence. In addition to causing physical injury, domestic violence can have a profound impact on children's core beliefs about themselves, those in authority, and those with whom they have intimate relationships. The trauma and anxiety it produces can impede children's development by preventing them from forming healthy emotional attachments with others, and derailing their efforts to learn basic social skills. This devastating emotional, cognitive, and behavioral damage can be manifested even after a child reaches adulthood. The following discussion explores some specifics of these effects.*

F Emotional Effects

Domestic violence terrorizes children. Once a violent incident has occurred, children may experience pervasive anxiety that another attack is imminent. They may feel rage at both the abuser and the abused parent, or confusion, guilt, shame, and helplessness. If the family is separated as a result of the abuse, children often experience grief and depression.*

F Cognitive Effects

Domestic violence teaches children that violence is effective behavior. Children in homes with a heterosexual male abuser may learn that men are aggressive and domineering, while women are powerless and deserving of abuse. They may learn that they and their mothers are worthless, and that adults cannot be trusted. Children exposed to domestic violence may learn to equate caring with abuse. They frequently believe that they are to blame for the abuse, particularly if some of the parental conflict involves child care issues. This belief is reinforced when the abuser tells the children that the abused parent deserves the abuse, or that it is occurring for the family's own good. If children are threatened or punished when they disclose the violence in their homes, they may learn to be deceptive and indirect in their communication with others.

F Behavioral Effects

Domestic violence can cause developmental delays in children. Children in households where violence occurs may experience delayed development of speech, motor, and cognitive skills. Anxiety over their family situation may interfere with their ability to function in school, or cause learning disabilities. Conversely, domestic violence may cause a child to "over-achieve." Children in homes where domestic violence is present may also develop complaints such as insomnia, diarrhea, bedwetting, or frequent illnesses. Some children experience eating or sleeping disorders, withdrawal, over-compliance, clinginess, aggression, destructive rages, detachment, regressive behavior, a fantasy family life, or thoughts of suicide.

*Jackson, *Intervention with Children Who Have Witnessed Abuse*, p 4–5 (House of Ruth, Baltimore, MD, 1996); Ganley, *supra*, p 28–29.

*See Saunders, *Child Custody Decisions in Families Experiencing Woman Abuse*, 39 Social Work 51, 52–53 (1994), and Crites & Coker, *What Therapists See That Judges May Miss*, Judges' Journal, 9, 11–12 (Spring, 1988).

*Studies cited in Edwards, *Reducing Family Violence: The Role of the Family Violence Council*, 43 *Juvenile & Family Court J* 1 (1992), and Jackson, *supra*, p 5.

**The Effects of Women Abuse on Children*, p 11–12 (2d ed, Nat'l Center on Women & Family Law, 1994).

A few children turn to violent behavior themselves as a result of observing adult domestic violence. An Oregon study reported that 68% of the delinquent youth in treatment programs had witnessed their mother's abuse and/or had been abused themselves. These youth had committed such crimes as arson, assault, rape, and murder. Ninety percent of the youth within the group were abusing alcohol, and 89% were abusing drugs. A 1985 Massachusetts study found that children who witnessed the abuse of their maternal caretaker were:*

- Twenty-four times more likely to commit sexual assault crimes.
- Fifty percent more likely to use drugs and/or alcohol.
- Seventy-four percent more likely to commit crimes against another person.
- Six times more likely to commit suicide.

F Effects on Adult Behavior

Children carry the effects of domestic violence into their adult lives. The failure to acquire academic or interpersonal skills in childhood may adversely impact an adult's abilities to maintain a job or an intimate relationship. Moreover, male children who have witnessed domestic violence in their homes are at increased risk for perpetuating abuse in the families they form as adults. In one study, men who had witnessed domestic violence were three times more likely to hit their wives than those who had not.*

1.8 Chart — The Power and Control Wheel

The Domestic Abuse Intervention Project of Duluth, Minnesota, has devised the following Power and Control Wheel chart, which illustrates the dynamics of domestic violence as a wheel with spokes symbolizing the control tactics exerted in various aspects of the relationship.



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